IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8887 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKSHKUMAR RAGHANLAL KHATRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8887 of 2001

MR DM THAKKAR for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 26th August, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in

exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two offences registered against the detenu under the Bombay Prohibition Act and statements of two anonymous witnesses recorded by the sponsoring authority. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The only ground that is contended by the learned Advocate for the petitioner is that the detenu was in judicial custody when the order was passed. He submitted that the satisfaction recorded by the detaining authority for the need for immediate exercise of powers under Sec.3 of the PASA Act, is therefore, baseless. The detenu is already in custody and his likelihood of moving a bail application is without any basis and therefore the petition may be allowed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contentions raised before this Court, it is clear that the detenu was in judicial custody when the order was passed. The detaining authority observed that he may apply for bail and on getting bail, may pursue his illegal activities. This is without any basis and is not permissible under the law. The detenu was in judicial custody and therefore, the order would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, wherein it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that

likelihood of detenu moving an application for bail is not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 26th August, 2001 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. Detenu - Prakashkumar Raghanlal Khatri be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas